

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.428 of 2015

Arising Out of PS.Case No. -112 Year- 2009 Thana -NANHNPUR District- SITAMARHI

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1. Raj Kumar Mahto son of Late Pragash Mahto Resident of Village - Chhoti Sauriya, P.S. - Nanpur, District - Sitamarhi.
2. Jai Kishore Mahto son of Bhikhari Mahto Resident of Village - Rajkhand, P.S. - Aurai, District - Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Baban Roy, Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 22-03-2018

None appears on behalf of appellants on repeated calls whereupon Sri. Baban Roy has been requested to assist the court as an Amicus Curiae.

2. Appellants, Raj Kumar Mahto and Jai Kishore Mahto have been convicted for an offence punishable under Section 366A IPC vide judgment of conviction dated 20.06.2015 and each one has been sentenced to undergo RI for 7 years as well as to pay fine of Rs. 10,000/- in default thereof, to undergo RI for six months additionally, vide order of sentence dated 25.06.2015 by the Additional Sessions Judge-2nd, Sitamarhi in Sessions Trial No. 12/2010.

3. PW-4, Md. Fahim filed a written report on 20.09.2009 alleging inter alia that on 20.09.2009 at about 5.00 AM,



his daughter (name withheld) aged about 15 years has gone towards pond lying east to his village to meet nature's call. Laxaman Mahto son of Raj Kumar Mahto, Raj Kumar Mahto son of Pragas Mahto, Rajiya Devi wife of Raj Kumar Mahto, all residents of Village-Chhoti Saraiya, PS-Nanpur, Distt-Sitamarhi, Jai Kishore Mahto son of Bhikari Mahto, Sita Devi wife of Jai Kishun Mahto, both residents of Village-Rajkhand, PS-Aurai, Distt-Muzaffarpur, have kidnapped his daughter. When she did not return, then he has gone in search of her and during course thereof, Md. Ainul and his wife Saimun Nisa have disclosed that his daughter was forcibly taken away after gagging her mouth in a white vehicle. He has gone to the place of Laxman Mahto as well as to the place of his relatives but, failed to trace out whereupon the matter is being reported for necessary action.

4. On the basis of the aforesaid written report, Nanpur PS Case No. 112/2009 was registered whereupon investigation proceeded and during course thereof, Raj Kumar Mahto and Jai Kishore Mahto were apprehended, so, keeping the investigation pending against remaining, charge-sheet has been submitted against these two accused persons, facilitating the trial meeting with the ultimate result, subject matter of challenge under instant appeal.

5. Defence case as is evident from the mode of cross-



examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, it has been pleaded that the alleged victim got herself married with one Shravan Kumar and is enjoying her marital life. Furthermore, two DWs have also been examined in order to substantiate the same.

6. In order to prove its case, prosecution had examined altogether 4 PWs who are PW-1, Md. Ekram, PW-2, Saimun Nisa, PW-3, Rajiya Khatoon and PW-4, Md. Fahim. Side by side had also exhibited Ext-1, signature of PW-4, informant over written report. Defence had also examined two DWs, DW-1, Md. Majid and DW-2, Md. Imteyaz, both co-villagers of informant.

7. PW-1 had not supported the prosecution and on account thereof, was declared hostile. PW-2 is Saimun Nisa who had deposed that on the alleged date and time of occurrence she had seen Laxman Mahto, Raj Kumar Mahto, Rajiya Devi, Sita Devi, Jai Kishore Mahto, after gagging mouth of the victim aged about 15 years took her away over white vehicle. The girl has not yet been recovered. She had further stated that Laxman was a tutor. Claimed identification of the accused. None turned up to cross-examine her and so was discharged.

8. PW-3 is the mother of the victim who had deposed that on the alleged date and time of occurrence, her daughter had gone



to meet nature's call and during said course, Laxman, tutor, and his mother, sister, father kidnapped her. Her daughter is still traceless. The girl is along with them. Identified the accused. During cross-examination, she had admitted presence of her daughter in voter list. She had further stated at para-3 that she had no occasion to go to Village-Chhoti Saraiya and on account thereof, she is unable to identify any of the residents of Chhoti Saraiya. She had further denied the suggestion that victim had married with Shrawan Kumar and is residing at Delhi along with him and is leading a happy marital life. She had further denied that out of suspicion these accused have been named as an accused.

9. PW-4 is informant/father. He had stated that on the alleged date and time of occurrence, victim had gone to meet nature's call but did not return whereupon, made hectic search and during course thereof, he came to know that Laxman Mahto, Raj Kumar Mahto, Rajiya Devi, Sita Devi, Jai Kishore Mahto were going along with his daughter as was disclosed by Saimun Nisa. Accordingly, he had gone to the place of Laxman who was found absent. He had gone to the place of Jai Kishore Mahto, he was also found absent. Then thereafter, he had gone to the police station and filed written report. During cross-examination at para-2, he had stated that As Jai Kishore and Laxman were giving tuition at his village, on



account thereof, they were known to him. In para-3, he had further stated that he had not gone to the place of Jai Kishore Mahto. He was not at all on visiting terms. Then he was shown voter list and after seeing the same, he admitted that there happens to be presence of name of victim but, he is not in a position to identify her photo. He had admitted that in 2009, victim was major. Then had disclosed that he is not knowing whether victim is living with Shravan Kumar after solemnization of marriage with him. He had admitted presence of land of Laxman in his boundary and so it was suggested that only to grab the land, this case has been instituted.

10. DW-1, Md. Majid and DW-2, Md. Imteyaz, co-villagers have been examined on behalf of defence over the fact that the alleged victim is residing at Delhi after marrying with Shravan Kumar, son of Nathuni, R/O Chhoti Saraiya and further is mother of two children. During course of cross-examination, they both have stated that after the alleged occurrence, she had not returned back.

11. From the record it is evident that Investigating Officer has not been examined. So, what kind of activity Investigating Officer had taken during course of investigation to search out the victim is a circumstance which will play pivotal role as there happens to be specific discloser at the end of appellant that victim had married with Shravan Kumar son of Nathuni of Village-Chhoti Saraiya and on



that very pretext, two witnesses have also been examined.

12. The aforesaid theme is found further relevant in the background of the fact that PW-4, informant had admitted status of the victim to be major. In the aforesaid background, the evidences have to be tested. Certainly PW-1 did not support the case of the prosecution whereupon was declared hostile. PWs-3 and 4 are not an eyewitness to occurrence. PW-3 had not disclosed that she came to know about the occurrence from Md. Ainul and her wife Saimun Nisa while PW-4, informant in the written report had disclosed the source of information from Ainul and his wife Saimun but during course of evidence, he stuck on Saimun Nisa only. He had not disclosed that Saimun had said that after gagging her mouth, the accused persons kidnapped her rather as per evidence, it is apparent that the victim had accompanied the accused persons so named.

13. When the evidence of PW-3 is gone through, apart from the fact that she was not at all cross-examined, she had stated that after gagging mouth, the victim aged about 15 years was taken away by the accused persons in white vehicle. Absence of gagging of mouth of the victim and taking away in white vehicle, being absent, in the evidence of PW-4, the informant, if taken in the background of status of the victim to be major as per para-3 (PW-4) is a circumstance which does not tally with the evidence of PW-2 and in



the aforesaid facts and circumstances, the appellants whose involvement even as per version, being father and other persons to that of co-accused, Laxman Mahto should be given benefit of doubt in the background of the fact that in-chief PW-4 had narrated that he had gone to the place of Jai Kumar but during cross-examination denied the same and that being so, the judgment of conviction and sentence recorded by learned lower court is found non maintainable. The same is set aside. Appeal is allowed.

14. Since appellant is on bail, he is discharged from the liability of bail bonds.

15. The first and last pages of the instant judgment be handed over the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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